



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

June 6, 2013

CHAN

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Peter Chu**
Tax Registry No. 920126
94th Precinct
Disciplinary Case No. 2010-0258

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on January 11, February 5, and February 20, 2013 and was charged with the following:

DISCIPLINARY CASE NO. 2010-0258

1. Said Police Officer Peter Chu, while assigned to the Manhattan Court Section, on or about July 20, 2008, did wrongfully and without just cause utilize a Department computer to make an inquiry unrelated to the official business of the Department or the City of New York, in that he improperly utilized a Department computer to ascertain information for his personal use.

P.G. 219-14, Page 1, Paragraph 2

**DEPARTMENT COMPUTER
SYSTEMS
DEPARTMENT PROPERTY**

2. Said Police Officer Peter Chu, while assigned to the 94th Precinct, on or about July 8, 2011, August 18, 2011, and September 16, 2011, did wrongfully and without just cause engage in off-duty employment without authority or permission to do so. (As amended)

P.G. 205-40, Page 1, Paragraph 1

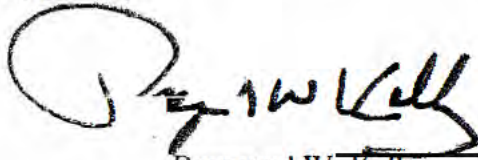
**OFF-DUTY EMPLOYMENT
PERSONNEL MATTERS**

DISCIPLINARY CASE NO. 2010-0258

POLICE OFFICER PETER CHU

In a Memorandum dated May 7, 2013, Assistant Deputy Commissioner David S. Weisel found Police Officer Peter Chu Guilty of Specification No. 1 and Not Guilty of Specification No. 2, in Disciplinary Case No. 2010-0258. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

Police Officer Chu's misconduct in this instant matter warrants the forfeiture of thirty (30) vacation days, as a disciplinary penalty.

A handwritten signature in black ink, appearing to read "Ray W. Kelly". The signature is stylized with a large, circular initial "R" and a long, sweeping underline.

Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

May 7, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Peter Chu
Tax Registry No. 920126
94 Precinct
Disciplinary Case No. 2010-0258

The above-named member of the Department appeared before the Court on January 11, February 5 and February 20, 2013, charged with the following:

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P.G. 219-14, Page 1, Paragraph 2 – DEPARTMENT COMPUTER SYSTEMS
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2. Said Police Officer Peter Chu, while assigned to the 94th Precinct, on or about July 8, 2011, August 18, 2011, and September 16, 2011, did wrongfully and without just cause engage in off-duty employment without authority or permission to do so. (*As amended*)

P.G. 205-40, Page 1, Paragraph 1 – OFF-DUTY EMPLOYMENT
PERSONNEL MATTERS

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office. Respondent was represented by John Tynan, Esq., Worth, Longworth & London LLP.

Respondent, through his counsel, entered a plea of Not Guilty to Specification No. 2. He pleaded Guilty to Specification No. 1 and testified in mitigation of the penalty. A stenographic

transcript of the trial-mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Having pleaded Guilty, Respondent is found Guilty of Specification No. 1. Respondent is found Not Guilty of Specification No. 2.

SUMMARY OF EVIDENCE

The Department's Case

The Department called Sergeant Clara Geraldino as a witness.

Sergeant Clara Geraldino

Geraldino was assigned to the Internal Affairs Bureau (IAB). In September 2011, she was assigned to investigate allegations that Respondent engaged in computer misuse and unauthorized off-duty employment. The computer misuse case involved Respondent running names in the Department database. IAB suspected that Respondent was running these names for compensation, based on the amount of money in his financial accounts. A further investigation was launched into possible off-duty employment.

When IAB conducted surveillance on Respondent, investigators observed him traveling to a 99 cent store warehouse location on three occasions: July 8, August 18, and September 16, 2011. On those days, investigators saw Respondent pick up merchandise and load it into his car, deliver the merchandise to a 99-cent store in Queens, and stock shelves.

In January or February 2012, Geraldino went to the store, located on Northern Boulevard in Queens. Geraldino later learned that the store was owned by Respondent's wife, Person A. During Geraldino's time at the store, Person A was the only person working.

At an official Department interview held in the summer of 2012, Respondent explained to Geraldino that "from time to time his wife would ask him to pick up merchandise from these locations and deliver them to the store." Respondent did not specify how often he picked up and delivered merchandise, but said he did it "often enough." Respondent stated that he helped Person A because she could not afford to hire any employees. In addition to picking up and delivering merchandise, Respondent "would stock the shelves, he would fix the merchandise in the store, he would go into the basement and fix things in the basement that needed to be stocked." Respondent's statements were consistent with surveillance photographs, which were entered into evidence as Department Exhibits (DX) 1a-r.

Respondent stated in his interview with Geraldino that he did not receive any monetary compensation for the assistance he provided at the store.

In 2009, Respondent submitted an application for off-duty employment for a job in real estate. The application was denied. Respondent did not have an off-duty employment application filed with the Department in 2011.

On cross examination, Geraldino testified that Respondent conducted the computer inquiries on mobile data terminals.

Geraldino confirmed that Respondent was never seen handling money inside the 99-cent store, taking items off the shelf for customers and bringing them to the counter for payment, or taking purchased items out to a customer's car. Respondent's name was not on any of the documents filed with the New York Department of State concerning the incorporation of the

business (see Court Exhibit 1, Certificate of Incorporation for "Sunny 99 Cents Discount Store Corp.," filed Mar. 31, 2010). Respondent did not have any type of ownership stake in the store.

Although large amounts of cash were deposited into Respondent's bank account, IAB never made a conclusion as to where the money came from. There were no outflows of money from Respondent's account to pay for the store's merchandise. Respondent was not observed exchanging money when he went to the warehouse location. Respondent explained at his official interview that Person A made the purchases with her credit card and he just went to the location to pick up the merchandise at her request. At the time of the interview, the store had been open for less than two years.

On re direct examination, Geraldino testified that the store was open seven days a week. Respondent told Geraldino that he helped Person A because she was new at running a business. Respondent said that he went to the store "particularly during delivery periods when she received large shipments. He was in the store acting as security, so you know, no one would shoplift in the store. [Person A] was concerned about being shoplifted, and he said that he was there to make sure that didn't happen." Respondent did not specify how often he went to the store, but he went to help Person A "whenever she needed it."

Respondent told Geraldino that he and Person A managed their money separately and that he did not know how much money the store made. When Geraldino asked about the deposits of cash in his account, Respondent replied that he did not know how the money got there and that he needed to speak with Person A. Respondent and Person A shared a condominium in Queens. Respondent owned two cars, one of which was a Mercedes-Benz. His car payments totaled approximately \$1,300 a month.

Upon questioning by the Court, Geraldino admitted that she did not know on which dates Respondent's supposed security guard duties at the store occurred.

According to Geraldino, the account that received the cash deposits belonged to just Respondent. It was not a joint account with Person A, but Respondent told Geraldino that Person A had access in terms of depositing money.

On re-cross examination, Geraldino explained that Respondent watched the store for shoplifters while Person A received deliveries. Geraldino did not believe Respondent carried his firearm, handcuffs or radio during those times.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent, a 16-year member of the Department, was first assigned after the Police Academy to the 30 Precinct. After a year and a half, he was assigned to the Manhattan North Tracer Unit. This was part of the Organized Crime Control Bureau. The idea was for officers in uniform to patrol drug spots after a Narcotics Bureau unit had conducted enforcement to ensure that dealers did not simply take over the location once the police left.

Respondent was next assigned as an undercover officer in Narcotics Boroughs Manhattan North and Queens South. He worked as an undercover for about one year, until 2001, when he was re-assigned to patrol in the 25 Precinct. He asserted that Narcotics experienced downsizing after the September 11th terrorist attacks. Respondent worked in the 25 Precinct until he was placed on modified duty in 2008.

Respondent had been married for seven years to Person A. She owned a 99-cent store in Jackson Heights, Queens. In July 2008, while he was assigned to the Manhattan Court Section (on modified duty), Person A asked Respondent to give a Patrolmen's Benevolent Association (PBA) card to a childhood friend of hers who was moving to New York from out of state. Person A also asked him to run a computer check on the friend to make sure the friend was not suspended or had a criminal background. Using the computer terminal at his command, Respondent ran the friend's name and date of birth in the Department of Motor Vehicles (DMV) database. He claimed that this was the only computer check he made on behalf of his wife.

In September 2011, Person A's 99-cent store had just opened and she did not have any employees. When asked why he went to the store, Respondent said that when Person A first opened it, "she didn't know how to run it, and people from the street they take advantage of that. . . . She doesn't know how to look at people or something, and a lot of shoplifter, and they even call 911 a few times. The detective squad was there and we rewinding the tapes. Even some people just go in and grab stuff and run out of there. My wife . . . was fear for her safety, that's why she asked me on the day off can you come by at least there is a man standing there and to help out."

Respondent did this roughly once a week at the beginning. After a couple of months, Respondent started going to the store just once every two weeks.

Although Respondent later stopped going to the store altogether, he did at times pick up merchandise from the wholesaler. He did this only when there was a problem with a shipment and Person A could not leave the store to pick up the merchandise herself. Thus, she asked Respondent for his help. On these occasions, Respondent would pick up the merchandise and bring it to the store. No money was exchanged during these transactions.

Respondent had no ownership rights in Person A's store. He neither supplied any money to open the store nor received any payment for being there. He never worked the cash register.

In order to open the store, Person A needed to borrow money from family and friends. This borrowed money was deposited into a bank account that Respondent and Person A shared jointly. Respondent maintained a separate individual account in another bank.

On cross examination, Respondent affirmed that Person A did not know how to run a store at first. She did not have any employees because she could not afford to.

When asked, "But you actually provided services for your wife with respect to the store ... standing present to ward off any shoplifters," Respondent answered, "I think that's just doing a husband's duty. It's not offering services." When asked, "So you're saying that you assisted your wife, because again, you're married to her, so you had that desire to help her out," Respondent replied, "She told me she doesn't want to get hurt because some of the shoplifters becoming aggressive, sometimes throwing stuff, like that." Finally, the Advocate inquired, "So you were there to make certain she had that security presence as you testified earlier," and Respondent answered, "Kind of, yes."

At the time of trial, Person A employed one part time worker. Person A had opened a second store as well, but Respondent had not assisted there.

Upon questioning by the Court, as to any "security presence," Respondent said, "Just one day, because according to my wife, some of the shoplifter they became very aggressive ... throwing stuff around and throwing at her, so she was in fear for her safety. That's why she called 911." He was "[l]ike kind of" there to provide security because "I was there doing translation for the squad basically." Respondent denied that Person A "asked you to be a presence there, ... like actually stand in the store with her." Person A "gave me call and said things happened

like this. I need you to come here because . . . they are not able to explain to the detective. So she give me a call to do the translation basically.”

FINDINGS AND ANALYSIS

Specification No. 1

Having pleaded Guilty to Specification No. 1, Respondent is found Guilty.

Specification No. 2

In 2008, Respondent was assigned to the 25 Precinct in East Harlem. Department auditors found that Respondent was using Department computers to check the names of a very large number of individuals with certain ethnic last names. The ethnicity did not accord with the census of the precinct. Investigators also discovered that large amounts of currency were coming to a bank account to which Respondent was a depositor. Investigators wanted to delve into the possibility that Respondent was engaged in some kind of criminal activity.

After a wide-ranging investigation into possible corruption, the investigation did not reveal anything particularly nefarious, like human trafficking. Most of the name-running was beyond the statute of limitations. Investigators did find that Respondent ran one individual's name as a favor to a friend of his wife. He pleaded Guilty to this incident. The investigation also led to the accusation now at issue: that Respondent was engaging in unauthorized off-duty employment by working at his wife's discount store on Northern Boulevard in Queens.

On three separate occasions, investigators observed and recorded Respondent picking up merchandise at a warehouse, driving it to the store, carrying in boxes, and putting the

merchandise on the shelves. The lead investigator noted that Respondent knew exactly where to go and where the goods should be placed.

Respondent admitted the conduct but argued that it did not constitute off-duty employment as delineated in Patrol Guide § 205-40. He merely was helping out his wife and was not an employee.

To establish off-duty employment as construed by the Patrol Guide, an employer-employee relationship must be established. *Case No. 2010-2011*, p. 17 (Jan. 5, 2012). But while a financial link like a salary is one consideration, see *Case No. 2010-2983*, pp. 16-18 (Feb. 4, 2013); *Case No. 2010-1962*, pp. 13-14 (Dec. 12, 2012), “[a]n officer does not have to be paid to be found guilty of off-duty employment.” *Case No. 75662/00*, p. 15 (May 27, 2002).

It is not necessary that the member be formally termed an “employee.” Cf. *Case Nos. 2010-0287 & -1855*, pp. 15-16 (Nov. 17, 2011) (gym payroll records indicated that officer was paid on per-class basis for teaching Zumba). The substance of the work, not its form, is controlling. Cf. *Case No. 85413/09*, pp. 8-9 (Dec. 10, 2010) (officer would not be heard to claim that he performed no work for and received no money from his wife’s business where he was listed as a partner on business certificate and would receive ownership of firm if she died); *Case Nos. 82103/06, 82873/07 & 83810/08*, pp. 158-61 (Oct. 16, 2009) (rejecting claim that officer merely “outsourced” extermination work to “freelancer,” when that individual actually was his employee).

Respondent contended that he was not paid for anything he did at the store. The lead investigator asserted that large deposits were coming to his bank account. But Respondent testified that this was a joint bank account with Person A. This was consistent with his official interview statement as recounted by the investigator because the interview was not placed into

evidence as a party admission that he was unfamiliar with the deposits and would have to ask his wife. No bank documents, not even a single statement, were introduced by the Department to contradict Respondent's testimony or to show deposits that would be consistent with him directly being paid by the store. The Court finds Respondent's testimony about the bank account to be reasonable.

Respondent also denied acting as a security guard, explaining that he only helped his wife interact with the police where the store had problems with shoplifters or snatch-and-grab thieves. The Department did not charge him with unauthorized employment as a security guard, which would be expected if that was what they truly concluded. Respondent's testimony, read in full and in context, is consistent with no more than what another member of the service would have done, which was to respond to the store because police were called. The Department's interpretation of this as an admission that he worked as a security guard is unfounded.

No one factor covers the instant case exactly. It is closest, however, to the situation in which a member renders unpaid, casual assistance to a going concern, even a for-profit one, but is not an employee within the meaning of the Patrol Guide. It is not enough to say, as the Department argued, that Respondent took the role of an employee that his wife otherwise would have needed to hire. If that were the case, the uncompensated members in *2010 2011* (bodybuilder who stood at product booth during trade shows and wore T shirt with product's name) and *Case No. 84081/08*, pp. 10 11 (Aug. 11, 2011) (corner man for boxer who acted mostly as a gofer) would have to have been found guilty of off-duty employment. They were found not guilty.

The fleeting nature of Respondent's help to his wife here picking up merchandise at the warehouse, taking it to the store, and stocking the shelves is different from other cases in which

the circumstantial evidence defeated claims of non-employment. This is especially true concerning cases of employment as a bouncer in bars and nightclubs. Cf., e.g. Case No. 74889/99, pp. 22-23 (Apr. 2, 2001) (member had keys to the bar, regularly used side entrance, often arrived early, assisted owner by checking IDs, musicians with equipment and bouncers if problems arose, kept his personal keys behind bar and had access to cash register and employees' private room), confirmed sub nom. Matter of Kissh v. Kerik, 304 A.D.2d 332 (1st Dept. 2003).

The case cited by the Department, *Case No. 2010-2389* (Oct. 20, 2010) was a plea and is of limited precedential value because the officer essentially agreed to the facts in question, specifically noting that he was on a soon-to-expire promotional list. There, the officer also worked at his wife's store, but "tended to the store in her absence," specifically by being behind the counter (see tr. of plea, Oct. 5, 2010, p. 4). Those facts take that officer's assistance well beyond what was done by Respondent.

In sum, the Department failed to show that the mostly-undisputed facts made out the misconduct of off-duty employment. Therefore, he is found Not Guilty of Specification No. 2.

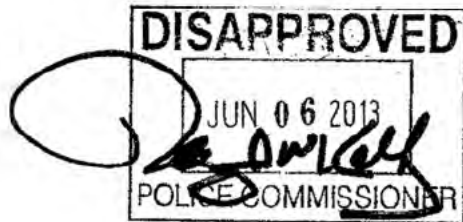
PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on December 8, 1997. Information from his personnel file that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of running a Department computer check as a favor to his wife. His wife asked if Respondent could give her friend a PBA card. His wife also wanted

him to check if the friend had any problems, so he ran her name. He did this while he was on modified duty, assigned to the Manhattan Court Section.

An appropriate penalty for misuse of Department computers to look up friends or acquaintances, for reasons not necessarily proved to be nefarious, is the loss of 15 vacation days. See, e.g., *Case No. 2008-0650* (Aug. 2, 2011) (warrant checks on girlfriend); *Case No. 84659/08* (Aug. 25, 2010) (checks on CCRB complainant and giving results to CCRB investigator). The Court, however, is aware of Respondent's prior record, see Conf. Mem., infra. Therefore, Respondent should be penalized with the forfeiture of 20 vacation days. This is consistent with the Department's recommendation, in which the Advocate cited a penalty range of 10 to 20 days for computer misuse.



Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials

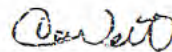
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER PETER CHU
TAX REGISTRY NO. 920126
DISCIPLINARY CASE NO. 2010-0258

In 2010 and 2012, Respondent received an overall rating of 3.0 "Competent" on his annual performance evaluation. He was rated 3.5 "Highly Competent/Competent" in 2011. He has been awarded three medals for Excellent Police Duty. [REDACTED]
[REDACTED]

Respondent has been the subject of one prior adjudication. In 2009, he forfeited 30 suspension days for harassing and displaying his gun to another driver during an off-duty traffic dispute. He has been on Level II Discipline Monitoring since April 2008.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner Trials